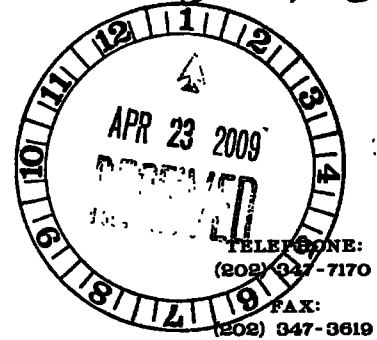


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April 23, 2009

WRITER'S E-MAIL:

VIA HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
Attn: Ex Parte No. 431 (Sub-No. 3)
395 E Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

APR 23 2009

Part of
Public Record

Re: STB Ex Parte No. 431 (Sub-No. 3), Review of the
Surface Transportation Board's General Costing System

Dear Acting Secretary Quinlan:

The undersigned wishes to speak for five minutes at the April 30, 2009 hearing in the above-referenced proceeding. I will be representing the Western Coal Traffic League, National Rural Electric Cooperative Association, American Public Power Association and Seminole Electric Cooperative, Inc. My testimony will address: (1) proceeding timing; (2) proceeding issues; and (3) proceeding guidelines.

Also, enclosed for filing is an executed original and ten (10) copies of the Joint Written Testimony of the Western Coal Traffic League, National Rural Electric Cooperative Association, American Public Power Association and Seminole Electric Cooperative, Inc. Kindly date-stamp the extra copy and return it to our messenger. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. LeSeur".

John H. LeSeur
An Attorney for Western Coal Traffic League,
National Rural Electric Cooperative Association,
American Public Power Association and
Seminole Electric Cooperative, Inc.

Enclosures

STB EX PARTE NO. 431
(SUB-NO. 3)

APR 23 2009

**JOINT WRITTEN TESTIMONY OF
WESTERN COAL TRAFFIC LEAGUE,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
AMERICAN PUBLIC POWER ASSOCIATION
AND SEMINOLE ELECTRIC COOPERATIVE, INC.**

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**Attorneys for Western Coal Traffic
League, National Rural Electric
Cooperative Association, American
Public Power Association and Seminole
Electric Cooperative, Inc.**

Dated: April 23, 2009

STB EX PARTE NO. 431
(SUB-NO. 3)

The Western Coal Traffic League (“WCTL”), National Rural Electric Cooperative Association (“NRECA”), American Public Power Association (“APPA”) and Seminole Electric Cooperative, Inc. (“SECI”) (collectively “Coal Shippers”) present this Written Testimony in response to the Board’s notice of public hearing served on April 6, 2009. For the reasons set forth below, Coal Shippers respectfully urge the Board not to undertake a comprehensive review of the Uniform Railroad Costing System (“URCS”) at this time. If the Board nevertheless decides to go forward, Coal Shippers urge the Board to adopt guidelines that will allow interested shippers to meaningfully participate in such a review, if they have the resources to do so.

WCTL is a voluntary association, formed in 1976. WCTL's regular membership consists entirely of shippers of coal mined west of the Mississippi River. All of this coal is transported by rail and WCTL members currently ship and receive over 175 million tons of coal by rail each year. WCTL members are listed in Attachment 1.

Since its formation over thirty years ago, WCTL has actively participated in all proceedings conducted by the Board and its predecessor, the Interstate Commerce Commission (“ICC”), involving the transportation of western coal. These proceedings have run the gamut, including maximum rate rulemaking proceedings, competitive access rulemaking proceedings, rail merger cases, rail construction proceedings, Rail Cost Adjustment Factor proceedings, accounting principles proceedings, and cost of capital proceedings.

As particularly pertinent here, WCTL participated in extensive proceedings culminating in the Board’s adoption of URCS in 1989. WCTL also has participated in all follow-up proceedings in the Ex Parte 431 (Sub-No. 2) docket. Most WCTL members have used URCS costs either in individual proceedings before the Board, including in several maximum rate cases, or in rail contract negotiations.

NRECA is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. NRECA represents the nation’s 930 not-for-profit, customer-owned rural electric cooperatives that serve more than 42 million end users in 47 states. Of those 930 cooperatives, 64 are generation and transmission cooperatives that are owned by and sell power to their member distribution cooperatives. NRECA’s members rely in substantial part on coal and associated coal transportation by rail to meet the loads of their consumer-owners.

APPA is the national service organization representing the interests of the nation’s approximately two thousand (2,000) locally owned, locally controlled, not-for-

profit electric utilities and entities of government, such as municipalities, counties, public utility districts, and some state governments, throughout the United States. APPA members purchase and ship by rail millions of tons of coal annually to generate electricity to serve their loads.

SECI is a non-profit electric generation and transmission cooperative headquartered in Tampa, Florida. SECI generates, sells and transmits bulk supplies of wholesale electricity, primarily to its ten member distribution cooperatives, which also are not-for-profit entities. SECI and its members serve nearly 900,000 metered residential and business consumers in 46 of Florida's 67 counties. One of the SECI's major generation assets is the 1300 megawatt, coal-fired Seminole Generating Station near Palatka, Florida. SECI currently is a party to litigation before the Board concerning the reasonableness of the rail rates paid by SECI for the transportation of coal and petroleum coke to the station.¹

The Board's URCS costing procedures are of particular importance and concern to Coal Shippers because, among other things, these procedures play a key role in maximum rail rate cases. The Board uses URCS to determine its statutory jurisdiction to hear maximum rate cases, and also uses URCS as part of its maximum rate analysis.

COMMENTS

The Board adopted URCS in 1989 and made some minor changes to the URCS procedures in 1997. The Board states in its Notice that it "believes it is time for a

¹ Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., STB Docket No. 42110 (Complaint filed Oct. 3, 2008).

second, and more comprehensive, review of URCS” and asks the parties to “comment on how best to revise the existing model.” Id. at 1. The Board proceeds to identify thirteen separate items, plus an open request for “additional aspects or features,” that could form part of the Board’s new review of URCS. Id. at 1-2. These items are reproduced in Attachment 2.

I.
THE BOARD SHOULD NOT REOPEN URCS AT THIS TIME

Coal Shippers respectfully disagree with the Board’s assertion that now is a good time to start a comprehensive review of URCS. This view is not based on any disagreement with the Board on the need to develop and maintain a general purpose costing system that produces accurate results. The issues here are the costs that all participants – the Board, the railroads and the shippers – will have to incur if URCS is reopened, and whether now is the opportune time to incur them.

As the Board knows, it took the ICC nearly a decade to develop URCS. This was a very expensive undertaking for all concerned – the ICC, the railroads and the shippers. WCTL was one of the principal shipper participants in the ICC URCS proceedings and WCTL incurred very large expenditures in order to meaningfully participate in the URCS proceedings. These expenditures were necessitated by the complex subject matter, which required WCTL to retain several expert witnesses.² These

² Both as a matter of organizational structure and longstanding practice, the Board and its predecessor have relied on interested parties to provide the resources and input

witnesses presented numerous detailed statements and studies to the ICC, over multiple years. WCTL also had to repeatedly respond to various proposals designed not to increase the accuracy of rail costing but to produce inflated variable costs, and inflated maximum rates, on unit train coal traffic.

The Board's proposal to undertake a comprehensive new review of URCS will also be very time consuming and costly for all participants. Chairman Mulvey recently stated that a comprehensive review of URCS will take two to three years. Chairman Mulvey also stated that this new review would require the Board to incur substantial increased costs, which he estimated at \$3 to \$4 million, and require the Board to retain outside expert assistance in the form of retained contractors.

As was the case when URCS was first developed, shippers can only meaningfully participate in a comprehensive review of URCS by retaining experts and working side-by-side with the Board and its contractors to address the complex issues that will be reopened and revisited in a new URCS proceeding. Absent this effort, neither Coal Shippers, nor any other shipper, will be able to effectively work with the Board or comment on any proposed changes to URCS.

Based upon Chairman Mulvey's recent statements, Coal Shippers understand that the only way the Board can proceed with a comprehensive review of URCS is to obtain an additional \$3 to \$4 million in targeted funding from Congress for this project. Coal Shippers urge the Board to defer further consideration of a

necessary to determine the impact of regulatory proceedings on their interests, and to protect those interests as final rules and procedures are developed.

comprehensive review of URCS at least until such time as Congress has decided whether it will fund the Board's efforts. We live in budget constrained times, and Congress may decide that however meritorious the Board's objectives may be here, additional funding to support a comprehensive reopening and re-evaluation of URCS at this time is not a legislative priority.

Coal Shippers face similar budget choices. Over the past several years, Coal Shippers have been engaged in several very expensive proceedings before this agency, including the Revised Coal Rate Guidelines Proceeding (Ex Parte No. 657) and the Revised Cost of Capital Proceeding (Ex Parte No. 664). Like the STB, Coal Shippers are budget constrained, and they may not be able to raise the funding necessary to meaningfully participate in the URCS review process. In any event, shippers should not have to make this decision unless and until Congress gives the STB the funding it needs to start and complete a major review of URCS.

Coal Shippers understand that the Board is interested in a comprehensive review of URCS due to the increased role that URCS costs play under the new rules the Board has developed to set maximum rates in large, medium and small rate cases. Even if Congressional funding is available now, WCTL urges the Board to wait a few years to see if these standards are being invoked by rail shippers, and if they are being invoked, whether they are working in the manner intended by the Board, before the Board initiates a costly proceeding to fine-tune URCS.

II. **THE 13 ITEMS**

Coal Shippers are not in a position today to meaningfully comment on the 13 numbered items set forth in the Board's Notice or to offer suggestions to revisit other URCS features. Each of the 13 items, and other non-listed items, raise complex costing issues, and most are interrelated. Specifically, to respond to the Board's Notice, at a minimum Coal Shippers would need to: (1) undertake a comprehensive review of URCS to identify, in detail, the procedures used to calculate, allocate and separate URCS costs (including all studies and analyses that were relied upon in developing the current URCS formula); (2) obtain and review records, including carrier records, to determine what data, studies, etc. are available for purposes of evaluating the development and application of costs in the current rail environment; (3) analyze the collected data; and (4), if, as a result of steps 1, 2 and 3, it appears better procedures and/or factors can be developed, develop those procedures and/or factors and present the results to the Board, and other parties, for review and comment.

III. **GUIDELINES**

If the Board decides to move forward now to review URCS, Coal Shippers recommend that the Board consider the following guidelines:

- The review should be comprehensive, not piecemeal. The Board should not allow parties to focus on partial revisions to URCS that they believe will advance their litigating or negotiating positions, rather than advancing what Coal

Shippers understand to be the Board's objective here – to undertake a comprehensive review of URCS.

- The Board should make sure that it creates a level playing field by giving shippers access to all carrier data and records necessary to develop, verify and/or audit any special studies or other materials that shippers may want to evaluate or that railroads may present in this proceeding. In this regard, the Board should not allow any partisan interests -- be it the railroads or their customers -- to conduct or control studies that the Board intends to rely upon in formulating any revisions to URCS. To be truly objective, any new or modified variable cost methodology must be exclusively the Board's work-product, and must be characterized by complete transparency in its development.

- The Board should consider and reinstate procedures that permit parties to develop adjustments to system average costs that reflect movement or route specific costing parameters and require the railroads to maintain the data necessary to make these adjustments. The Board cannot obtain accurate variable cost calculations in unit train coal cases if the efficiencies inherent in unit coal train service are not fully captured in its variable costing procedures. As the Board previously recognized in this proceeding:

While URCS develops system-average costs, it has long been recognized that trainload and multi-car shipments move at lower-than-system-average cost and that single-car shipments move at higher-than-system-average cost.

Review of General Purpose Costing System, 2 S.T.B. 659, 665 n.17 (1997).

- The Board and the parties should obtain and review the costing systems that carriers actually employ to calculate their service costs. Carriers have a vested interest in keeping accurate service costs and establishing procedures to calculate those costs. Any comprehensive review of URCS should measure the Board's regulatory costing standards and procedures against the costing standards and procedures actually utilized by major railroads. This "real world" check should help insure that the Board does not modify URCS in a way that produces regulatory cost results that bear no resemblance to costs carriers actually incur in providing service.

CONCLUSION

Coal Shippers appreciate the opportunity to submit this testimony.

Respectfully submitted,

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Dated: April 23, 2009

WCTL MEMBERS

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Arizona Electric Power Cooperative, Inc.

CLECO Corporation

Austin Energy (City of Austin, Texas)

CPS Energy

Kansas City Power & Light Company

Lower Colorado River Authority

MidAmerican Energy Company

Minnesota Power

Nebraska Public Power District

Omaha Public Power District

Texas Municipal Power Agency

Western Farmers Electric Cooperative

Western Fuels Association, Inc.

Wisconsin Public Service Corporation

Xcel Energy

THE 13 NOTICED ITEMS

1. Improve the efficiency adjustments associated with unit-train and multi-car movements;
2. Update the historical studies used in URCS;
3. Improve the costing of trailer or container on flat car (TOFC/COFC) traffic;
4. Update the URCS national car tare weight calculation to account for the number of car miles that each car type operates;
5. Update the number of miles between non-intermodal intertrain/intratrain (I&I) switches by URCS car type;
6. Disaggregate loss and damage information by carrier and by two-digit Standard Transportation Commodity Code (STCC) groupings;
7. Revise the Train Switching Conversion factor used to place all road train crew wages on a common mileage basis;
8. Require carriers to report their average switch engine speeds in order to better reflect switching expenses;
9. Revise the ratio of urban and rural land values to allocate expenses between running and switching;
10. Revise the URCS car types to eliminate outdated car types and add new car types to reflect those currently used in the railroad industry;
11. Revise the spotted to pulled factor for each car type;
12. Revise the approach used in individual proceedings to index URCS in order to use the Rail Cost Adjustment Factor indexes published by the Board; and
13. Update the various statistical relationships used in URCS, including the variability estimates.